

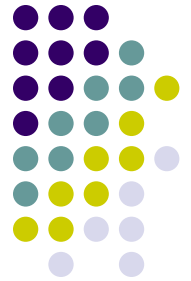


License Withdrawal Update
July 1, 2010



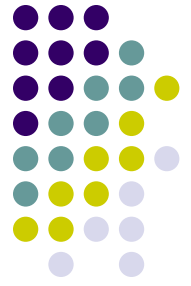
License Withdrawals

- Georgia law directs DDS to use conviction information submitted by courts to make eligibility decisions when each customer comes in for licensing or license renewal.
- Most convictions, either by themselves or combined with others on the defendant's driving record, can result in a withdrawal of his/her driving privilege.



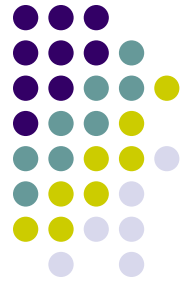
License Withdrawals (cont'd)

- Most license withdrawals are referred to generically as “suspensions,” but there are actually several different actions taken by the DDS, including:
 - Cancellations
 - Suspensions
 - Revocations
 - Disqualifications



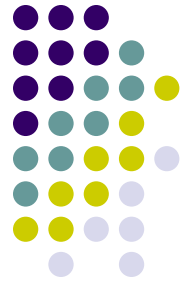
Cancellation

- 'Cancellation of driver's license' means the annulment or termination by formal action of the Department of Driver Services of a person's license because of some error or defect in the license or because the licensee is no longer entitled to such license.



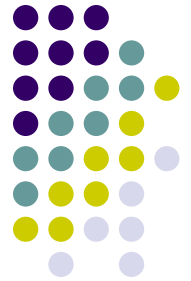
Cancellation (cont'd)

- The cancellation of a license is without prejudice, and application for a new license may be made at any time after such cancellation. O.C.G.A. §40-5-1(3).



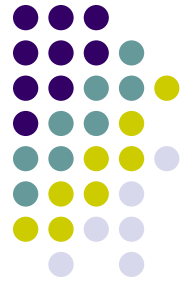
Suspension

- 'Suspension of driver's license' means the temporary withdrawal by formal action of the department of a person's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be for a period specifically designated by the department. O.C.G.A. §40-5-1(17).



Revocation

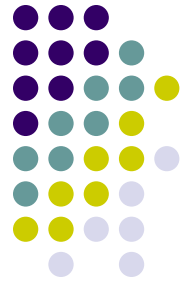
- 'Revocation of driver's license' means the termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the public highways, which license shall not be subject to renewal or restoration, except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this chapter. O.C.G.A. §40-5-1(16).



Withdrawal Mechanism

- Withdrawals are either administrative or imposed by operation of law
- Operation of law = resulting from a conviction
- Administrative = resulting from an arrest, court appearance, civil proceedings, etc.
- All based in statutes

Withdrawals Resulting from Convictions

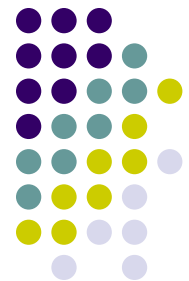


Statute	Description	Predicate Offenses	Comments
O.C.G.A. §32-6-30	Refusal to weigh	O.C.G.A. §32-6-30	*Commercial vehicles only *Six (6) month suspension



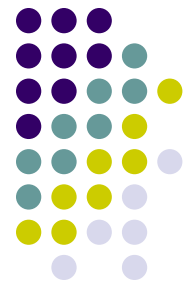
Withdrawals (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-22.1	DUI or drug conviction prior to age 16	O.C.G.A. §40-6-391 O.C.G.A. §16-13-2 O.C.G.A. §16-13-30 O.C.G.A. §16-13-72	*1st Offense: Not eligible for license until age 17 *2nd + Offense: No license until age 18



Withdrawals (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-30	Violation of license restriction	O.C.G.A. §40-5-30	<p>*Six (6) month suspension for offenses that occurred prior to July 1, 2010</p> <p>*Suspensions up to six (6) months imposed at the discretion of the court that handled the citation for incidents on or after July 1, 2010.</p>



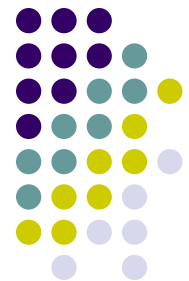
Withdrawals (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-54	Mandatory suspensions for serious offenses	O.C.G.A. §40-6-393(b) O.C.G.A. §40-6-270 O.C.G.A. §40-6-186 O.C.G.A. §40-6-395 O.C.G.A. §40-5-120 O.C.G.A. §40-5-125 O.C.G.A. §40-6-15 Felony with Vehicle	*Suspension terms are found in O.C.G.A. §40-5-63(a)



Withdrawals (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-57	Points suspension for accumulation of 15 points within 24 months based upon incident dates	All moving violations for which no other suspension is imposed	O.C.G.A. §40-5-57(c)(1)(B) and (c) allow points avoidance for 1 nolo plea or 1 driver improvement clinic every 5 years (course completion also results in reduction of fine)



Withdrawals (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-57.1	Serious Juvenile (Under 21)	O.C.G.A. §40-6-270 O.C.G.A. §40-6-186 O.C.G.A. §40-6-395 O.C.G.A. §40-6-390 4+ point offense Underage purchase of alcohol Accumulation of 4+ points within 12 months (under age 18 only)	*1 st offense: 6 month suspension *2 nd offense: 12 month suspension *Permit available for customers over age 18 suspended due to 4 point speeding ticket *Points avoidance allowed under O.C.G.A. 40-5- 57(c)(1)(C), but nolo treated as a conviction



Withdrawals (cont'd)

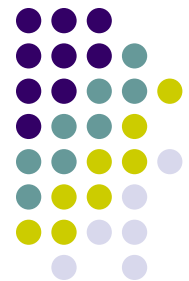
Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-57.1 (cont'd)	DUI (age 17-20)	O.C.G.A. §40-6-391	<p>*1st offense with BAC < 0.08g: 6 month suspension</p> <p>*1st offense with BAC > 0.08g or other prior serious juvenile suspension: 12 month suspension</p> <p>*2nd offense: 18 month suspension (12 month suspension followed by 6 months with ignition interlock limited driving permit)</p>

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Withdrawals (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-57.2	Gas drive off	O.C.G.A. §40-6-255	*1 st offense: 6 months *2 nd offense: 1 year



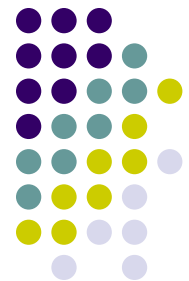
Withdrawals (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-57.3	Failure to yield resulting in serious injury	Second or subsequent conviction for violating O.C.G.A. §40-6-77 within five (5) years	30 day suspension



Withdrawals (cont'd)

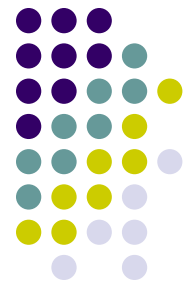
Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-58	Habitual violator revocation based upon 3 convictions within 5 years based on arrest dates	All offenses listed in O.C.G.A. 40-5-54 O.C.G.A. 40-6-391 O.C.G.A. 40-6-393 O.C.G.A. 40-6-393.1 O.C.G.A. 40-6-394 O.C.G.A. 40-6-395	*Multiple offenses from a single incident can be counted *Conviction for violation of HVPL results in greater of additional 2 year suspension or remaining period of original revocation.



Withdrawals (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-63	(a) Mandatory offenses	See O.C.G.A. §40-5-54, <i>supra</i> O.C.G.A. §40-6-391 (including endangering a child by DUI, but excluding DUI of drugs are treated like convictions for VGCSA)	*1 st offense with 5 years: 120 days *2 nd mandatory within 5 years or 1 st DUI with prior mandatory: 120 days (no permit) *2 nd DUI in 5 years: 18 month suspension (12 month suspension followed by 6 months with ignition interlock limited driving permit)

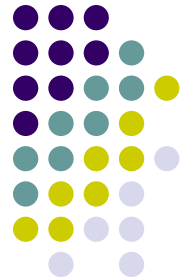
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Withdrawals (cont'd)

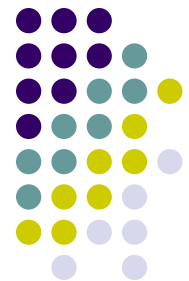
Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-63 (cont'd)	(d) Vehicular homicide (1st degree) and serious injury by vehicle	O.C.G.A. §§40-6-393(a) and 40-6-394	*3 year suspension with no permit eligibility *Nolo pleas to any vehicular homicide are treated as a conviction
	(e) and (f) Underage Possession of Alcohol (if not covered in O.C.G.A. §40-5-57.1)	O.C.G.A. §3-3-23 (underage possession while operating vehicle or attempt to purchase alcohol)	Conditional discharge for underage possession while operating vehicle avoids suspension

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Withdrawals (cont'd)

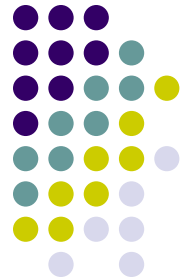
Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-64	Limited permit revocation	Moving violations and violations of permit restrictions	Additional six (6) month suspension



Withdrawals (cont'd)

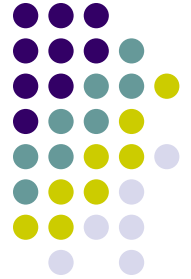
Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-70	Insurance convictions	O.C.G.A. §40-6-10	<i>Nolo</i> plea to 1st offense within 5 years avoids suspension, but 2nd conviction after (including another nolo plea) that is treated as 2nd offense. O.C.G.A. §40-5-70(d).

Withdrawals (cont'd)



Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-75	Controlled substance convictions	Possession of marijuana and all violations of the Georgia Controlled Substances Act	<ul style="list-style-type: none">*Suspension runs consecutively to any existing suspensions.*<i>Nolo</i> plea avoids suspension for first offense*First offender avoids suspension*Conditional discharge avoids suspension

Withdrawals (cont'd)



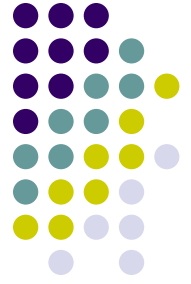
Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-121	Driving on suspended license	O.C.G.A. §40-5-75(f) O.C.G.A. §40-5-121	* <i>Nolo</i> plea avoids suspension once every 5 years



Withdrawals (cont'd)

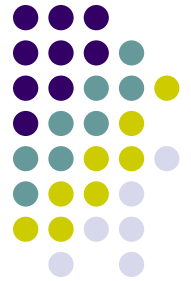
Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-6-189	Superspeeder	O.C.G.A. 40-6-160 O.C.G.A. 40-6-181 O.C.G.A. 40-6-188	*Applies to anyone convicted of speeding at 85 mph or more on any road or 75 mph or more on any 2-lane road *Indefinite suspension until superspeeder fee is paid.

Superspeeder Notices Sent



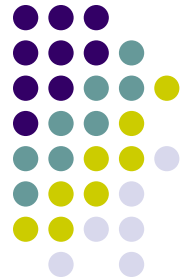
Jan	Feb	Mar	Apr	May	Jun	Total
142	1084	2546	3659	4746	4927	17,104

Withdrawals Not Based on Convictions



Statute	Description	Length	Comments
O.C.G.A. §17-10-3	Court ordered suspension	Indefinite up to full term of probation ordered in sentence(s) from criminal charge(s)	
O.C.G.A. §40-5-22	School absence or conduct violations	One year or until age 18, whichever is earlier	

Withdrawals (cont'd)



Statute	Description	Length	Comments
O.C.G.A. §40-5-22	Denial	Indefinite	Out-of-state suspensions prevent DL issuance in Georgia
O.C.G.A. §40-5-26	Parent requested revocation	At least three (3) months, but no longer than until age eighteen (18)	Only available to person who signed for child to obtain DL



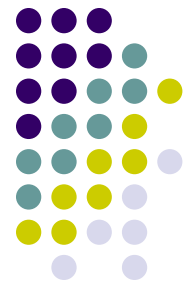
Withdrawals (cont'd)

Statute	Description	Length	Comments
O.C.G.A. §40-5-50	Cancellation due to ineligibility or failure to provide required information	Indefinite until eligible or required information provided	Examples include social security cancellations and cancellations due to withdrawals in other states
O.C.G.A. §40-5-54.1	Failure to pay child support	Indefinite until released by Child Support Enforcement	



Withdrawals (cont'd)

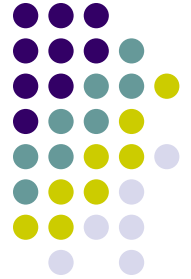
Statute	Description	Length	Comments
O.C.G.A. § § 40-5-56/17-6-11	Failure to appear	Indefinite until released by reporting court or until end of case	
O.C.G.A. §40-5-59	Medical revocations	Indefinite until released by physician and complete re-testing	DDS accepts reports from doctors, courts, law enforcement, prosecutors, and the public



Withdrawals (cont'd)

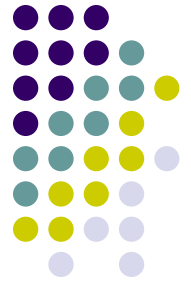
Statute	Description	Length	Comments
O.C.G.A. §40-5-67.1 *Counts toward suspension for DUI conviction, but not HV revocation. *If DUI is dismissed or reduced, DDS must delete the ALS/IC from the driver's record.	Administrative license suspensions (per se)	1st in 5 years: 1 year (early reinstatement-30 days) 2nd in 5 years: 18 months 3rd in 5 years: 5 years	Under 21-.02 Over 21-.08 CMV-.04
	Implied consent (refusals)	One (1) year	No permit availability and prevents permit on 1 st DUI

Safety Responsibility



Statute	Description	Length	Comments
O.C.G.A. §40-9-1, <i>et seq.</i>	Safety responsibility	Indefinite until surety posted or judgment satisfied	

Commercial Driving Disqualifications



- Commercial driving privilege is monitored by DDS separately from non-commercial driving privilege.
- CDL penalties are based upon requirements in federal law, 49 C.F.R. §383.51.
- Georgia law imposes commercial penalties on all drivers, even without CDL.

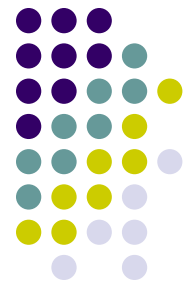
CDL Disqualifications (cont'd)



- Unless specified, penalties apply even if driver is not in commercial vehicle
- Neither a *nolo* plea nor first offender treatment will avoid commercial driving disqualification



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CDL Disqualifications (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-151(b)	1 st “Major” Offense while transporting hazardous materials	O.C.G.A. §40-6-391 O.C.G.A. §40-6-270 O.C.G.A. §40-6-271 O.C.G.A. §40-6-272 O.C.G.A. §40-6-273 Felony with Vehicle O.C.G.A. §40-5-146(b)(1) O.C.G.A. §40-6-393 O.C.G.A. §40-6-186 O.C.G.A. §40-6-395 O.C.G.A. §40-5-120 O.C.G.A. §40-5-125 O.C.G.A. §40-6-15 Commercial vehicle or cargo theft Refusal	3-year disqualification

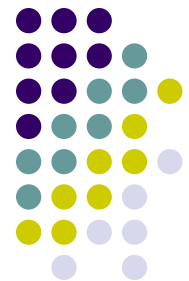
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CDL Disqualifications (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-151(c)	2nd "Major" Conviction *must be from separate incidents	O.C.G.A. §40-6-391 O.C.G.A. §40-6-270 O.C.G.A. §40-6-271 O.C.G.A. §40-6-272 O.C.G.A. §40-6-273 Felony with Vehicle O.C.G.A. §40-5-146(b)(1) O.C.G.A. §40-6-393 O.C.G.A. §40-6-186 O.C.G.A. §40-6-395 O.C.G.A. §40-5-120 O.C.G.A. §40-5-125 O.C.G.A. §40-6-15 Commercial vehicle or cargo theft Refusal	Lifetime disqualification

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CDL Disqualifications (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-151(e)	Use of CMV in commission of any felony involving a controlled substance or marijuana (other than mere felony possession)	VGCSA	Lifetime disqualification



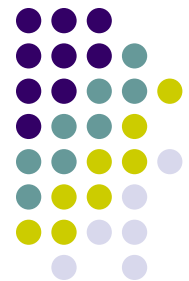
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CDL Disqualifications (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-151(f)(2)	3 rd "Serious" Violation within 3 years *must be from separate incidents	Speeding (15 mph +) Reckless driving Following too closely, Improper or erratic lane change; Any violation from a fatal crash (other than veh. hom.) RXR grade crossing violation Driving a CMV without a CDL Driving CMV without CDL on person Driving CMV without proper class license or endorsements	120-day disqualification (runs consecutively to 60-day disqualification if it has not yet expired)

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CDL Disqualifications (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-151(g)(1)	Violation of out-of-service order	O.C.G.A. §40-5-146(b)(2)	1 st : 180 days to 1 year 2 nd : 2-5 years 3 rd +: 3-5 years
O.C.G.A. §40-5-151(g)(3)	Violation of out-of-service order while transporting HM or 15+ passengers	O.C.G.A. §40-5-146(b)(2)	1 st : 180 days to 2 years 2 nd + in 10 years: 3-5 years

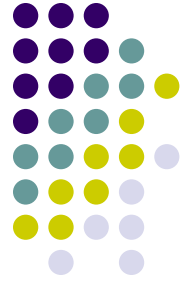


CDL Disqualifications (cont'd)

Statute	Description	Predicate Offenses	Comments
O.C.G.A. §40-5-151(k)(1)	Railroad grade crossing violation in CMV	O.C.G.A. §40-6-140 O.C.G.A. §40-6-141 O.C.G.A. §40-6-142 O.C.G.A. §40-6-143	1 st : 60 days 2 nd in 3 years: 120 days 3 rd + in 3 years: 1 year

Suspension Related Issues





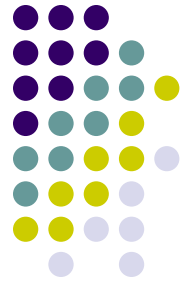
Non-Residents

- DDS imposes license suspensions upon non-residents who are convicted of offenses for which a suspension is mandated. O.C.G.A. §40-5-51.



Out-of-State Citations

- The DDS treats convictions imposed upon Georgia residents by courts in other jurisdictions as if they occurred in Georgia and imposes whatever penalty is mandated for such convictions. O.C.G.A. §40-5-52.



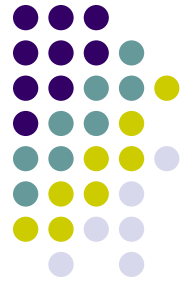
First Offender Treatment

- Sentences imposed with “first offender” language are considered convictions as defined in O.C.G.A. §40-5-1(4) according to *Salomon v. Earp*, 190 Ga. App. 405, 406-407 (rev’d on other grounds).
- The only exception to *Salomon* is for drug convictions pursuant to *Priest v. State*, 261 Ga. 651 (1991).



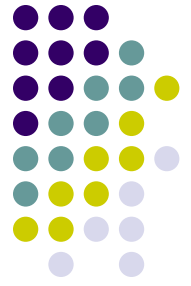
Nolo Pleas

- Nolo plea can be used to avoid some suspensions.
- Eligibility will depend upon the offense, the defendant's age, and his/her prior driving record.



No/lo Pleas (cont'd)

- Main areas of availability:
 - Points bearing offenses: Once every five (5) years (for defendants age 21 or older)
 - Misdemeanor marijuana: Must complete DUI Risk Reduction Program within 120 days of conviction
 - Insurance: Once every five (5) years
 - DWSL: Once every five (5) years



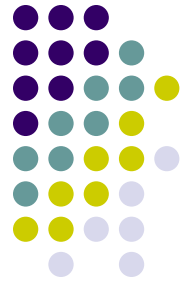
Supersedeas

- A notice of appeal does not stay a license withdrawal. If a defendant appeals a conviction that must be reported to DDS, the court must still report the conviction, and DDS will take whatever withdrawal is required, if any. See *Wells v. State*, 212 Ga. App. 15 (1994). If the conviction is overturned on appeal, DDS will amend the defendant's record.



Surrender

- Courts are required to compel a defendant to surrender his or her driver's license when he or she is convicted of any offense for which a driver's license suspension or revocation is imposed.



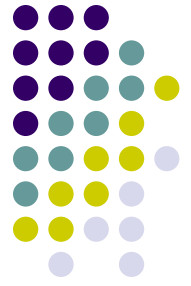
Service of Suspensions

- The court should also serve the defendant with notice of the suspension or revocation, though service of notice is not required as a pre-requisite to charging the defendant with driving on a suspended license as he/she has notice of the suspension by operation of law.



Effective Date

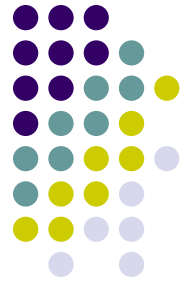
- Most suspensions and revocations begin on the date of the conviction that causes the withdrawal.



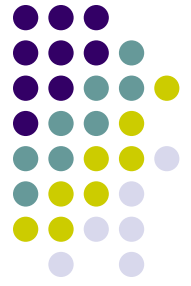
Period of Suspension

- DDS cannot begin calculating the driver's eligibility for reinstatement until he or she surrenders his or her driver's license.
- If not surrendered prior to the date that the conviction goes onto the defendant's driving record, the time starts as of that date.
O.C.G.A. §40-5-61(e).

Driving with a Suspended License

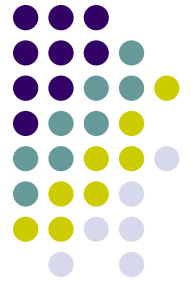


- The State bears the burden of proving that a defendant has notice of the suspension of his driver's license.
- Some license suspensions require actual notice, while notice is inferred for other suspensions based upon the mechanism that caused the suspension.



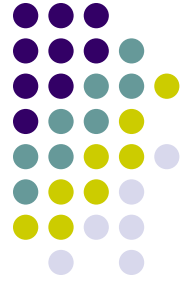
DWSL (cont'd)

- An example of a situation in which the evidence would show that a defendant had actual notice of a suspension would be if he/she admits that he/she knows that the license is suspended.
- Documentary evidence would also work as proof of actual notice, such as the 1205 issued for an administrative suspension or the certified mail receipt from correspondence sent by the DDS.



DWSL (cont'd)

- Proof of actual notice of a license suspension is now only required for the following suspensions:
 - ALS or implied consent
 - Failure to appear (pre-January 1, 2010)
 - Child support
 - School suspensions
 - Safety responsibility
 - Insurance cancellation (no new insurance cancellation suspensions were imposed after October 2002)



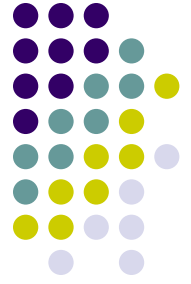
DWSL (cont'd)

- All other suspensions are imposed by operation of law, so the suspect has notice of his or her license suspension by virtue of his or her conviction for the underlying offense.



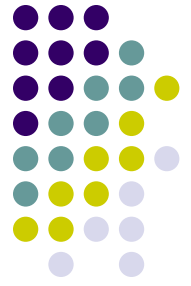
Failure to Appear

- Effective January 1, 2010, notice of suspensions for failure to appear is based upon the verbiage found on the UTC that warns the violator of the potential for a license suspension if he/she fails to appear on the ticket.



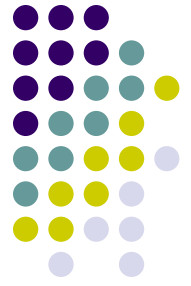
FTA (cont'd)

- The FTA suspension must have been imposed on or after January 1, 2010, OR the State must have proof of actual notice of the suspension.



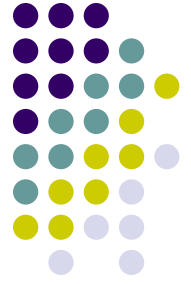
Limited Driving Permits

- DDS has very limited authority to issue limited driving permits (LDP's), and the suspension for which the customer seeks an LDP must be among those set forth in O.C.G.A. §40-5-64(a).



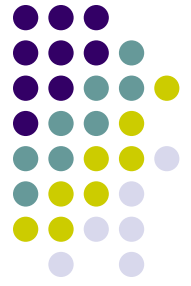
Permits (cont'd)

- Eligible suspensions:
 - TAADRA suspensions for school withdrawals, misconduct, absences-O.C.G.A. §40-5-22(a.1)(2)
 - First or second points suspensions-O.C.G.A. §40-5-57(d)
 - First mandatory suspension-O.C.G.A. §40-5-63(a)(1)
 - First ALS-O.C.G.A. §40-5-67.2(a)(1)



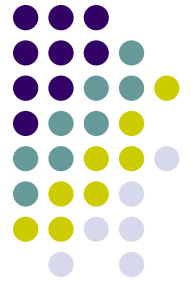
Permits (cont'd)

- Additional authority for probationary licenses in O.C.G.A. §§40-5-58, 40-5-67.2(a)(3) and 40-5-75 for 3rd suspensions.



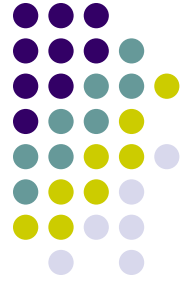
Permits (cont'd)

- LDP's allow the defendant to continue driving while his/her driving privilege is suspended or revoked, but only for limited, specific reasons.
- As a general rule, a permit may be used for driving to work, school, medical care or obtaining prescriptions, substance abuse treatment, driver improvement



Permits (cont'd)

- Cannot be used to take family members to school, work, etc. (not advisable even if on the way to licensee's work, school, etc.)



Permits (cont'd)

- Conviction for violating terms of permit (or any moving violation) extends the underlying suspension for 6 more months. O.C.G.A. 40-5-64(g)(1)(A).

Amending Court Dispositions to Address License Consequences



- O.C.G.A. §§40-13-32 and 40-13-33
 - Day 1-90, unlimited discretion
 - Day 91-180, hoops with strict compliance (motion, notice to prosecutor, hearing)
 - Day 181 on, no subject matter jurisdiction
- Does not apply to correction of typographical error on sentence

Questions???

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